FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application No.1910 of 2007.

Gajanan Namdeorao Wagh
.vs..
The State of Maharashtra.

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

---

Coram: C. L. PANGARKAR J.
Dated : 16th August 2007.

1. Heard Shri N.W.Sambre, Advocate for the applicant and Shri A.S.Sonare, Additional Public Prosecutor for the State.

2. This is an application under Section 438 of the Code of Criminal Procedure.

3. It is alleged that on 26/6/2007, Inspector of Police Nandura, Police Station received an information that the present applicant/accused is transporting in Truck No.AP-04-U-4508 the wheat and empty wheat bags, which is required to be sold in a Ration Shop. It is

alleged that it was being transported illegally and was being transported out of the State. The Police Officer, therefore, accosted the said truck which was being followed by a Tempo Trax. The Truck was accosted and it was found that it contained 162 bags of wheat. The Tempo Trax was also accosted. In that Trax, one Sagar Kawadkar and others were found. Sagar was questioned as to how and why this wheat was being transported and to whom it belongs. It is the case of the prosecution that Sagar gave a statement that the wheat belongs to present applicant Gajanan and it has been sold to one Rajkumar from Andhra Pradesh. He also said that he is working as a servant of Gajanan – the present applicant. Further, he discloses that still few more bags of wheat are lying in the godown Shiv Hardware at JalgaonJ amod. The Police also searched that godown. It was found that 129 bags of wheat were stored there. All these articles have been seized by the police and an offence has been registered against the present applicant as well as Sagar and others. The applicant apprehends arrest.

4. The application of the applicant for bail before the court of Sessions has been rejected on merits.

5. The learned counsel for the applicant submitted before me that the present applicant/accused has no connection whatsoever with the wheat that has been seized. He submitted that firstly the wheat has been seized from the custody of Sagar Kawadkar and not from the custody of the present applicant. Secondly, according to him, the information given by the Tahsildar on a Right to Information clearly discloses that a very negligible quantity from all fair price shop in that area is found to be deficient and therefore in no case, it could be said that the present wheat that has been seized by the Police was from the fair price shop. There is no doubt that the Tahsildar has issued a letter to the effect that a very negligible quantity of wheat is found to be deficient in the fair price shop. That does not necessarily go to show that the wheat that has been seized was not from the fair price shop. The co-accused Sagar has clearly given a statement which shows that this entire business is being carried out by the present applicant and he is merely a servant. It was contended that the confession of the co-accused cannot be taken aid of at this stage. I find unable to agree with the submission. The confession of the co-accused can be taken into account at this stage because without his assistance and proper interrogation further

investigation in the mater is quite impossible.

6. I have gone through the case diary produced before me. The case diary does disclose that 129 bags, which were found in the Shiva Hardware belong to the present applicant and the statements of witnesses go to show that other accused Sagar is a servant of present applicant. The statements further show that the godown in which the wheat was found was actually found to be in possession of the present applicant. The affidavit filed on behalf of the Investigating Agency also shows that the receipts under which this wheat is alleged to be purchased are also forged and not genuine. In view of this, it is absolutely clear that the proper interrogation and investigation cannot be carried out unless the present applicant/accused is arrested and interrogated. Mr.Sambre, learned counsel, contended that such wheat is available in the market to any person. There is no doubt that such wheat is available in the market. It is difficult to distinguish between the wheat available in the market and the ration shop, but then it has to be said that the police have seized the wheat and the investigation is in progress. The present applicant can at the time of interrogation certainly show to the police that how and

in what manner such wheat was acquired. It has to be noted here further that the wife of accused runs a fair price shop and therefore it cannot be said that he has no connection whatsoever with the fair price shop and wheat available therein. Mr.Sambre, learned counsel, submitted that the custodial interrogation of the present applicant is not now necessary because as directed by this court, during the interim bail, the accused has been appearing before the police and his statement has been recorded. That may be so, but in the present case it cannot be said that the applicant/accused is absolutely innocent and he is being unnecessarily involved in the crime. I therefore, do not find that this is a fit case where anticipatory bail should be granted. The application is rejected.

At the request of Mr.Sambre, learned counsel for the applicant/accused, accused granted a week's time to surrender.

Interim bail granted stands cancelled.

Judge.

pzc